

**R E M A R K S**

- Claims **2, 3, 5-47, 49-50 and 116-125** were pending and stand rejected.

Upon entry of this Amendment:

- Claims **2, 3, 5-47, 49-50 and 116-125** will be pending in the present application;
- Claims **2 and 5** will be amended; and
- Claims **2, 49, and 116** will be the only independent claims.

**A. Personal Interview**

We thank the Examiner for the helpful personal interview held at the U.S. Patent and Trademark Office on Monday, May 7, 2007 with our representative Stephan Filipek. The undersigned was grateful for the opportunity to discuss the present application with the Examiner in view of the non-final Office Action mailed on January 17, 2007 (hereinafter, the "Office Action"). During the discussion, the Examiner indicated that certain changes to claim **2** might serve to distinguish it from the cited art. Applicants have therefore amended claim **2**, as explained in detail below, and also provide arguments herein advocating the patentability of all of the pending claims.

**B. Amendments to Claims 2 and 5**

Claim **2** has been amended to more distinctly claim the invention, wherein language originally found in the preamble has been moved into the body of the claim. In particular, this cosmetic change results in claim **2** now reciting: *wirelessly communicating a signal between a first container adapted to store a first medicine and a second container, the second container adapted to store a second medicine*. Support for this amendment can be found, for example, in the preamble of originally filed claim **2**, and thus no new matter has been added.

Claim **5** has been corrected to depend on claim **1**, (and not on claim **4**) because claim **4** has been cancelled previously.

**C. Section 102(a) Rejection**

Claims **49-50 and 116-125** stand rejected under 35 U.S.C. 102(a) as being anticipated by U.S. Patent No. 5,950,632 issued to Reber et al. (hereinafter "Reber").

As explained during the personal interview, Reber does not teach or suggest a first container adapted to store a first medicine *wirelessly communicating* with a second container adapted to store a second medicine, as generally recited by both independent claims **49 and 116**.

With regard to claim **49**, the Examiner asserts that Reber discloses, at col. 7, lines 27-54, a medicine container that includes a communication device adapted to wirelessly communicate at least one signal between the medicine container and at least one other medicine container (Office Action, page 2). We disagree. The cited portion or Reber describes medicine containers capable of communicating with a "medical communication apparatus 50", and there is no suggestion that the "medical communication apparatus 50" is a medicine container or is adapted to store medicine. The medical communication apparatus 50 acts as a base station, and it is shown in Fig. 2 as communicating with one medicine container 52. In Fig. 3, Reber illustrates another embodiment of a "medical communication apparatus 100" for communication with each of three medicine containers 102, 104 and 106 by reading machine-readable data 112, 120 and 126 from each of labels 110, 116 and 124 associated with each of the medicine containers. Applicants respectfully submit that neither of these embodiments shows a first container adapted to store a first medicine *wirelessly communicating* with a second container adapted to store a second medicine. Accordingly, there is no teaching or suggestion for communication between two containers for storing medicine.

In view of the above remarks, Applicants respectfully submit that independent claims **49 and 116** are not anticipated, and request withdrawal of the 35 U.S.C. 102(a) rejections. In addition, since claims **50 and 117-125** either directly or indirectly depend upon claims **49 and 116**, these dependent claims should be allowable for at least the same reasons.

**D. Section 103(a) Rejection**

Claims **2, 3 and 5-47** stand rejected under 35 U.S.C. 103(a) as being unpatentable over Reber in view of U.S. Patent No. 6,529,446 issued to de la Huerga (hereinafter “de la Huerga”).

We respectfully traverse all of the Section 103(a) rejections.

**1. Independent Claim 2**

A *prima facie* case of obviousness has not been established for claim **2** (or for any claims dependent therefrom). In particular, we respectfully traverse the Examiner’s interpretation of the cited portions of Reber and de la Huerga, as discussed further below.

**(a) No suggestion of communication between two containers for storing medicine**

Contrary to the Examiner’s assertions, there is no suggestion in Reber or de la Huerga of communication between two medicine containers, much less wireless communication. Also, neither Reber nor de la Huerga suggests the desirability of having two medicine containers communicate with one another. It appears that both the Reber and de la Huerga references have been misinterpreted with respect to this subject matter.

The Examiner asserts: “Reber discloses...wirelessly communicating a signal between the first container and a second container the second container adapted to store a second medicine (See Reber; Col.7, lines 60-67).” [Office Action, page 5]. But this cited portion of Reber only describes medicine containers capable of communicating with a “medical communication apparatus 50.” As explained above, Reber does not teach or suggest that the “medical communication apparatus 50” is a medicine container or is adapted to store medicine. We therefore emphatically submit that Reber fails to even suggest *wirelessly communicating a signal between a first container adapted to store a first medicine and a second container, the second container adapted to store a second medicine* as recited by claim **2**.

Furthermore, de la Huerga does not cure this deficiency of Reber. In fact, the cited portions of de la Huerga disclose a medical organizing system 1300 (see Fig. 42) wherein the medicine containers are removably secured to a console or dispenser 1310 (see col. 47, lines 15-18). Each medicine container has an “interactive label 1106” (see Figs. 35 and 37) that includes a “memory strip 60” having “contacts 62”. The dispenser 1310 includes a housing having “slots

1319” that are designed to mate with the “plate 1104” of each medicine container. When a medicine container is fully engaged in the slot 1319, the contacts 62 are in contact with contacts 1150 of dispenser 1310, and the processor 1378 can read memory 60. In another embodiment, de la Huerga discloses use of a container having contacts 62 arranged as a series of stripes, and placing such a container into a round hole of the dispenser, wherein the hole is sized to fit the container such that contacts 1150 are in electrical contact with the contacts 62 (see col. 48, lines 10-26). Thus, not only does de la Huerga fail to suggest or teach communications between two medicine containers, Applicants respectfully submit that de la Huerga teaches away from wireless communications, as the disclosed embodiments require physical contact between contacts of a medicine container and the contacts of a dispenser unit in order to communicate.

Accordingly, since neither Reber nor de la Huerga teaches or suggests wireless communication between two containers for storing medicine, claim 2 is patentably distinct thereover.

**(b) No suggestion of an indication of a number of times that a second container is beyond a range in which a first container is able to communicate with the second container**

The present application discloses embodiments that provide for proximity information to include the number of times each medicine container has been moved beyond a range wherein the medicine container may communicate with another medicine container. A level of compliance to a medicine schedule may be based at least in part on such proximity information [See, e.g., Specification, page 37, lines 1-7].

Independent claim 2 recites features generally directed to wirelessly communicating *a signal including an indication of a number of times that the second container is beyond a range in which the first container is able to communicate with the second container and generating at least one code based at least in part on the signal, the at least one code indicating whether at least one party has complied with a schedule for taking the first medicine and the second medicine*. The Examiner admits that Reber does not disclose such features (Office Action, page 5), but has cited de la Huerga for the proposition that such features are known.

We respectfully submit that de la Huerga does not teach or suggest any such features. As discussed above, neither Reber nor de la Huerga suggests the ability of containers for storing

medicine to communicate with one another. Furthermore, nothing in the cited portion of de la Huerga (Fig. 42; col. 47, lines 11-43; and col. 48, lines 10-27) even hints at ranges for communication or of indicating a number of times something is beyond a range for communicating. In fact, Applicants submit that de la Huerga cannot possibly teach such operation because, as discussed above, de la Huerga teaches that contacts on each medicine container must come into physical contact with the contacts of a console in order to communicate information.

Thus, we respectfully submit that the cited references do not teach or suggest any such features or the desirability of compliance with a schedule for taking medicines that is based on an indication of a number of times one container is beyond a range in which another is able to communicate with it.

For at least these reasons, a *prima facie* case of obviousness has not been established for independent claim 2. In addition, we respectfully submit that dependent claims 3 and 5-47 should be allowable for at least the same reasons.

**(c) No motivation to modify or combine the cited references to provide for all of the recited features**

We also respectfully submit that there is no evidence of a motivation to combine the Reber and de la Huerga references. There is nothing in the cited references that even hints at the desirability of providing for two containers adapted to hold medicine that can communicate with each other (much less communicate wirelessly).

**2. Claim 3**

We respectfully dispute the basis for the rejection of claim 3.

The Examiner asserts that Reber teaches transmitting information regarding a first medicine from a first container to a second container and receiving information regarding the second medicine from the second container. Reber (including the cited portion) does not teach any such features.

Therefore, a *prima facie* case of obviousness of claim 3 has not been established.

**3. Claims 6-9**

We respectfully dispute the basis for the rejection of claims **6-9**.

The Examiner asserts that Reber teaches (i) detecting if the first container for storing medicine and the second container for storing medicine cannot communicate, (ii) determining if the first container and the second container are separated by a distance that prevents the first container and the second container from communicating, and (iii) determining a time when the containers are initially separated by a distance that prevents communicating. As discussed above, Reber (including the cited portions of col. 3, lines 2-25, and col. 4, lines 16-41) does not even hint at the ability of medicine containers to communicate with each other at all, much less the desirability of determining if such containers cannot communicate (or such a time).

In view of the above remarks, we submit that a *prima facie* case of obviousness of claims **6-9** has not been established.

**4. Claims 10-13**

We respectfully dispute the basis for the rejection of claims **10-13**.

The Examiner asserts that Reber discloses determining a distance between the first container and the second container based on a signal received wirelessly. Reber (including the cited portion) does not appear to teach any such feature.

Thus, we submit that a *prima facie* case of obviousness of claims **10-13** has not been established.

**5. Claims 14-17**

We respectfully dispute the basis for the rejection of claims **14-17**.

The Examiner asserts that Reber discloses tracking a location or identifying a location of at least one of the first and second containers. The first cited portion (col. 5, lines 9-30) discusses graphical representations of dosages. The second cited portion (col. 13, lines 25-43) discusses how the “medical communication apparatus 330” can establish communication with medical personnel and can have “network access.” We submit that neither of these cited portions, nor the rest of Reber, appears to have anything to do with tracking a location of a

medicine container. Accordingly, a *prima facie* case of obviousness of claims **14-17** has not been made.

**6. Claim 24**

We respectfully dispute the basis for the rejection of claim **24**.

The Examiner asserts that Reber teaches detecting a weight of the first container. We do not agree. The cited portion (col. 9, lines 14-30) does not teach or suggest detecting weight to determine if a portion of medicine has been removed from a container. There is no evidence (much less substantial evidence) of such a feature in the record.

Thus, a *prima facie* case of obviousness of claim **24** has not been established.

**7. Claims 32-36**

We respectfully dispute the basis for the rejection of claims **31 and 32-36**.

The Examiner asserts that Reber teaches to store information regarding the second medicine within the first medicine container. But the cited portion of Reber (col. 7, lines 47-67) describes storing information in a storage medium 66 which is associated with the communication apparatus 50 (see Fig. 2) and not with any medicine container. Thus, Reber does not teach such a feature, and we therefore submit that a *prima facie* case of obviousness has not been established for claim **31**.

With regard to claim **32**, the Examiner asserts that Reber teaches determining if the first medicine is incompatible with second medicine at col. 7, line 60 to col. 8, line 41. We disagree. The cited portion describes only taking two different medicines at different times; it does not suggest that the medicines are incompatible or making such a determination. To the contrary, the description indicates that the user will be signaled to take both medicines, suggesting that the medicines are compatible. There is no evidence (much less substantial evidence) of the recited feature in the record. Thus, no *prima facie* case of obviousness of claim **32** (or of claims **33-36** dependent therefrom) has been established.

We also respectfully dispute the asserted bases for rejecting claims **33-36**. In particular, regarding claims **33-36**, the Office Action recites that Reber discloses generating a warning if a first medicine is incompatible with a second medicine. We disagree. The cited portion (col. 8,

line 29 to col. 9, line 30) does not even remotely hint at such operation. There is no evidence (much less substantial evidence) of such a feature in the record. With particular reference to claims **34-36**, contrary to the assertion recited in the Office Action, Reber is devoid of any hint of a warning that two medicines are incompatible, much less storing or transmitting any such warning. Thus, a *prima facie* case of obviousness of any of claims **33-36** has not been established.

**8. Claim 40**

We respectfully dispute the Examiner's basis for the rejection of claim **40**.

The Examiner asserts that Reber teaches a micro-needle based device at Col. 7, lines 33-67. The cited portion does not even remotely teach or suggest a micro-needle based device. There is no evidence (much less substantial evidence) of such a feature in the record.

Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of Claim **40**.

**9. Claims 41-42**

We respectfully dispute the basis for the rejection of claims **41-42**.

As discussed above with respect to the independent claims, Reber does not teach or suggest anything having to do with determining whether two medicine containers can communicate. Nothing in the cited portion (col. 7, line 55 to col. 8, line 49) or otherwise in Reber even hints at determining if a container for storing medicine is positioned so as to communicate with another container for storing medicine, much less preventing a party from accessing at least one of the containers if they are so positioned. There is no evidence of such features in the record. Thus, the Examiner has thus failed to establish a *prima facie* case of obviousness of claims **41-42**.

**10. Claim 46**

We respectfully dispute the basis for the rejection of claim **46**.

The cited portion of Reber (col. 7, line 60 to col. 8, line 41) does not teach or suggest to store at least a portion of a medical history of a party within the first container, as required by



claim **46**. Instead, this portion of Reber discloses that labels on each medicine container may include a machine-readable and a human-readable data that may indicate the type of medicine within that container. There is no teaching or suggestion to include at least a portion of a medical history of a party, and thus Applicants submit that there is no evidence of such a feature in the record. Thus, no *prima facie* case of obviousness of claim **46** has been established.

#### **11. Other Assertions by the Examiner**

Our failure to specifically address other assertions and bases for rejection stated in the Office Action should not be taken as an indication that we necessarily agree or disagree with those assertions. In light of the Examiner's apparent misinterpretation of the cited references with respect to the independent claims, as discussed herein, it is not necessary to discuss all of the assertions contained in the Office Action at this time, although we reserve the right to do so in the future.

For at least the reasons stated herein, we respectfully request allowance of the pending Claims **2, 3, 5-47, 49-50 and 116-125**.

#### **E. Authorization to Charge Appropriate Fees**

We hereby petition for a one-month extension of time to respond to the Office Action, and request that our Deposit Account No. 50-0271 be charged the appropriate fee for the extension. We do not believe that any other fees are due, but if a fee should be necessary to continue prosecution of the present application, please also charge any such required fee to our Deposit Account No. 50-0271. In addition, please credit any overpayment to Deposit Account No. 50-0271.

**F. Conclusion**

In view of the above remarks, the Applicants respectfully submit that all of the claims are in condition for allowance, early notice of which would be appreciated. If the Examiner has any questions or does not agree that all pending claims are allowable, the Examiner is cordially requested to contact Stephan Filipek at telephone number (203) 461-7252 or via electronic mail at [sfilipek@walkerdigital.com](mailto:sfilipek@walkerdigital.com).

Respectfully submitted,

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